IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2294 OF 1997

Maharashtra State Road Transport)
Corporation, Nashik Division, Nashik)
and also having its office at Vahatuk)
Bhavan, Bombay Central)
Bombay 400 008.).. PETITIONERS

VERSUS

1) P.H. Pardeshi)
1509, Tuksal Lane)
Badrakali Road, Nashik.)

3) Presiding Officer)
Labour Court, Nashik.).. RESPONDENTS

Mr.G.S. Hegde for the Petitioners.

None present for Respondent No.1.

Respondent No.2 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 31ST MARCH 2005

ORAL JUDGMENT :

. The Petition challenges an order passed by the Labour Court, Nashik in Complaint (ULP) No.54 of 1983 on 21st June 1991. Aggrieved by the order of the Labour Court, the Petitioners have filed Revision Application (ULP) No.211 of 1991. This Revision Application was dismissed by the Industrial Court, Nashik on 3rd March 1997 and the order of the Labour Court, Nashik came to be confirmed.

2. The facts giving rise to the present Petition are as under :-

. According to the Petitioners, the first Respondent workman, who was working as a Telephone Operator since 1st March 1979, was issued a charge sheet on 3rd February 1983. Prior to this, the workman had been warned on several occasions and punished for certain acts of misconduct. Thereafter, he was transferred to some other establishment as his work was not satisfactory. The Petitioners claim that on account of the transfer, the workman had animus against the officers of the Petitioners and, therefore, on 21st October 1982, immediately after he was issued a transfer memo, the workman entered the premises and destroyed the cables and the key board which were installed in the cabin of one of the officers. The Petitioners, therefore, issued the charge sheet on 3rd February 1983. Consequent to an enquiry being held and the Respondent being found guilty of the misconduct alleged, his services were terminated by way of dismissal on 31st March 1983. Aggrieved by this decision of the Petitioners, the Respondent preferred a Complaint under Section 28 read with Item 1(b), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971

(hereinafter referred to as "the Act"). The Petitioners sought to justify their action by relying on the enquiry proceedings. The Labour Court came to the conclusion that the misconduct alleged against the Respondent had not been proved, although the enquiry had been held in accordance with the principles of natural justice and fair play. The Labour Court was of the view that the Respondent was entitled to reinstatement with continuity of service and full back wages since the misconduct had not been proved and an unfair labour practice had been committed under Item 1(b) of Schedule IV of the Act.

3. The Revisional Court deciding the issue under Section 44 of the Act, dismissed the Revision Application filed by the Petitioners and held that the Petitioners should implement the order of the Labour Court regarding back wages immediately. The Respondent had already been reinstated in service after the order of the Labour Court.

4. Mr.Hegde for the Petitioners submits that the misconduct has been proved by sufficient evidence and it was incorrect on the part of the Labour Court to have held that the Petitioners have committed an unfair labour practice. He submits that, in a case such as the present one, it is difficult to get any direct evidence on the issue as to whether the Respondent had in fact

entered the cabin between 10.00 and 10.30 in the morning of 21st October 1982 and destroyed the cables and the key board in the cabin. According to the learned Counsel, there was sufficient evidence on record to indicate that although the Respondent was on sanctioned leave, he had entered into the office premises. The Petitioners had subsequently found that the key board and cables were destroyed in the cabin and, therefore, it was natural for the Petitioners to have assumed that it was the Respondent who had committed the misconduct. The learned Advocate submits that the motive for the Respondent to have committed the misconduct is apparent since he had been transferred to a different place on 20th October 1982, after giving him several opportunities to improve his unsatisfactory work. It was only because of the transfer that the Respondent workman bore a grievance against the Petitioners and, therefore, entered the premises and destroyed the property of the Petitioners. The learned Advocate then submits that the Labour Court ought not to have interfered with the findings of the Enquiry Officer that the Respondent was guilty of misconduct, since there was no perversity in the report of the Enquiry Officer. He assails the order of the Revisional Court on almost the same grounds as the Revisional Court has reiterated the findings of the Labour Court.

5. As regards back wages, the learned Advocate submits that the Respondent was absolved of the misconduct alleged, it would not necessarily mean that he should be either reinstated or that full back wages should follow as a normal rule. According to the learned Advocate, there is evidence on record to indicate that the Respondent workman made no efforts to gain employment during the period of his forced unemployment. In such circumstances, submits the learned Advocate, the Respondent should not be awarded full back wages. He relies on the judgment of the Apex Court in the case of *M.P.State Electricity Board* vs. *Smt.Jarina Bee*, **2003 (4) Supreme To-day 510** and the judgment of the Single Judge of this Court in the case of *Navin J. Surti* vs. *Modi Rubber Ltd and another*, **2004 (2) ALL MR 358**.

6. Undisputedly, the Petitioners have already reinstated the Respondent workman. He has been continuing in service since 1991. Therefore, there is no need to disturb the findings of the Labour Court at this stage. In any event, on a perusal of the order of the Labour Court, I am of the view that the findings arrived at by the Labour Court that the workman was not guilty of the misconduct alleged against him are correct. There is no dispute that the Respondent was on leave on 21st October 1982 i.e. the date of the

incident. Although the Respondent has denied that he entered the premises of the establishment between 10.00 and 11.00 a.m. on 21st October 1982, there is material on record to indicate that somebody had seen him enter the premises between 10.30 and 11.00 a.m. on that day. Assuming that to be so, there is no evidence at all to the effect that he entered the cabin and broke the key board and destroyed the cables and wires installed in the cabin. Had the Respondent really been responsible for the incident, the Petitioners would not have waited for a period of four months to issue a charge sheet to him. The Labour Court, in my view, has rightly held that no misconduct was committed and that assuming the Petitioners could rely solely on circumstantial evidence, this evidence was not sufficient to prove the guilt of the Respondent. It is no doubt true that departmental enquiries and the reports of the Enquiry Officers are based on pre-ponderance of probabilities. However, the evidence should not be so insufficient as to fall short even of a pre-ponderance of probability, as in the present case.

7. The question now which arise is whether the Petitioners can be directed to pay the Respondent workman full back wages with effect from the date of his wrongful dismissal. Mr.Hegde for the Petitioners submits that the very fact that the Petitioners had

acted bona fide and mala fides have not been attributed to them for dismissing the Respondent, would indicate that the Respondent is not entitled to full back wages. This submission can hardly be accepted. Back wages are not paid on the basis of mala fide or bona fide action taken by an employer. If an action of the employer results in wrongful dismissal of an employee, the employee would normally be entitled to full back wages as a consequence of reinstatement with continuity of service. The employee would necessarily have to state on evidence that he was unemployed after his dismissal and that despite efforts being made by him to secure employment, he had not managed to get any gainful employment. An employee would also have to throw light in his deposition as to the efforts made by him to secure employment and the income derived by him during the forced unemployment. Once the employee discharges this burden, the onus shifts on the employer to establish that full back wages should not be paid to the workman. However, backwages cannot be reduced merely because mala fides are not alleged against the employer. The judgments cited by Mr.Hegde do not support his submission that back wages can be deprived if mala fides have not been alleged against the employer.

8. The learned Advocate then submits that, in any event, the Respondent was having some agricultural

income and it was incumbent on the Respondent to indicate his income in his deposition. Not having done so, the Respondent is not entitled to any back wages, much less full back wages. In the present case, the Labour Court has found that the Respondent has admitted that he did not try to secure gainful employment. The Labour Court has also found that the Respondent had some income on account of agricultural work. Despite this, the Labour Court has granted full back wages. What exactly was the agricultural income has not been brought on record. However, it will have to be assumed that it would be such that would be very meagre. Merely because a person has managed to get some remuneration, it would not necessarily deprive him of the entire amount of back wages. The period of unemployment of the Respondent was from 31st March 1983 till 21st June 1991 when he was reinstated in service. Although, there is no evidence either to show what exactly was the remuneration, I am of the view, in the facts and circumstances of the case, it would be safe to assume that the Respondent had earned an amount equivalent to twenty five per cent of his back wages.

9. The orders of the Industrial Court, Nashik and the Labour Court, Nashik are confirmed to the extent that the Respondent workman is entitled to reinstatement with continuity of service. However, the

Respondent-workman is entitled to only seventy five percent back wages.

10. Rule made partly absolute. No order as to costs.